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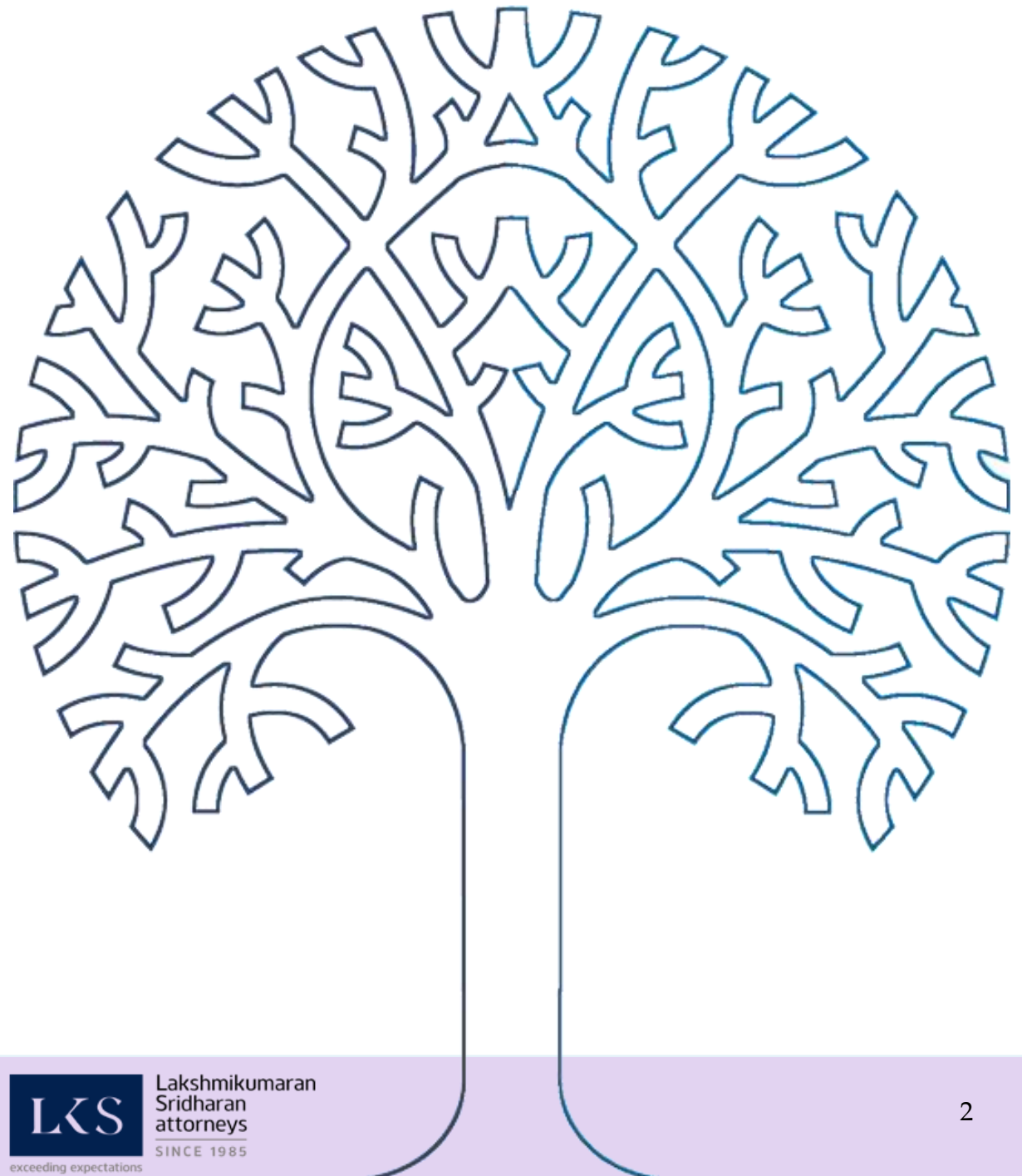
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Article

Beyond territorial reach: Transnational subsidies and the evolving landscape

By Arpit Mehra

The article in this issue of International Trade Amicus discusses the nature of transnational subsidies, in which a government of one country subsidizes a firm outside of its territory. It explores whether these subsidies can be acted upon under the WTO's Agreement on Subsidies and Countervailing Measures (SCM Agreement), and how certain countries such as the EU and the US are tackling these subsidies. According to the author, the current text of the SCM Agreement offers certain challenges in investigating transnational subsidies and their countervailability, however, other countries may be enticed to follow the EU and USA in countering the transnational subsidies notwithstanding the legal challenges which may come up in justifying such measures.

Beyond territorial reach: Transnational subsidies and the evolving landscape

By Arpit Mehra

Introduction

China's state-driven economic model and its extensive use of subsidies have raised concerns about its compliance with World Trade Organization ('WTO') rules. In recent times, trading partners like the United States of America ('US') and the European Union ('EU') have accused China of unfairly tilting the playing field through industrial subsidies and opaque support for Chinese companies operating abroad under the Belt and Road Initiative ('BRI'). This subsidization gives rise to a situation in which a government of one country subsidizes a firm outside of its territory. These situations raise the issue of whether transnational subsidies can be addressed under the current WTO framework, particularly, the Agreement on Subsidies and Countervailing Measures¹ ('SCM Agreement').

This article will briefly discuss the nature of transnational subsidies, whether they can be acted upon under the SCM

Agreement, and how certain countries such as the EU and the US have tackled these subsidies.

Transnational subsidies and the SCM Agreement

Traditionally, anti-subsidy investigations, conducted under the framework of SCM Agreement, have focused on subsidies given to companies within the exporting/producing country. However, a transnational subsidy refers to a subsidy provided by the government of one country to a company operating in the territory of another WTO member. This section explores the legal text of the SCM Agreement and endeavors to map the complexities concerning countervailability of transnational subsidies under its current framework.

Article 1.1.(a)(1) of the SCM Agreement defines a 'subsidy' as a financial contribution by a government or public body within the territory of a Member². It can be seen that the Article 1.1 uses the phrase '*within the territory of a Member*' and not '*the Member*'. Hence, it can be argued that a financial contribution by a

¹ See the text of the SCM Agreement [here](#).

² 'Member' here refers to a WTO member country which is party to the SCM Agreement.

government of one member country to a company located in the territory of another WTO Member can qualify as a subsidy under Article 1.1(a)(1) because the text does not particularize the subsidies within the territory of 'the' Member being investigated but broad-bases it to the territory of 'a' or 'any' Member.

However, a look at some of the other provisions of the SCM Agreement gives a contrary interpretation. Some of the said provisions are referred to below.

Article 2 of the SCM Agreement introduces the concept of 'specificity'. It provides that to be actionable, a subsidy must be specific to a particular company or industry or region. Particularly, the text of the Article refers to 'an enterprise or industry or group of enterprises or industries *within the jurisdiction of the granting authority.*' The text suggests that the recipient of subsidy must be within the territorial jurisdiction of the granting authority in the member country.

Article 2.2 also states that '*A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific.*'. This provision again implies that the SCM Agreement contemplates the recipient to be within the territorial jurisdiction of the granting authority.

The SCM Agreement's focus on a single 'subsidizing member' (Footnote 63) and 'exporting Member' (Article 12) also suggests that the recipient firm must be located within the territorial jurisdiction of the government of the exporting country.

Yet again, Article 13 grants consultation opportunities solely to Members the products of which may be subject to investigation. Article 18 envisages termination of investigation upon an undertaking or limitation of the subsidy being offered by the government of the exporting Member.

In the context of transnational subsidies discussed in the opening part of this article, the situation becomes unusual if the government authority granting a transnational subsidy is different from the government of the exporting member. Hence, the SCM Agreement is generally not geared to address the concerns relating to transnational subsidies. This proposition is yet to be tested before a WTO panel or an Appellate Body.

Approach adopted by the EU & USA

European Union

The BRI had raised concerns in the EU about unfair competition due to its support for Chinese companies having transnational operations. The European Commission ('EC') had addressed this by imposing countervailing duties ('CVD') on subsidized goods

produced by Chinese-owned firms in third countries which exported their goods to the EU.

In the case of *certain glass fiber fabrics imported from Egypt* (Commission Implementing Regulation (EU) 2020/870 of 24 June 2020), the EC imposed CVD on two Egyptian subsidiaries of Chinese state-owned enterprise by contending that even if the subsidies originated in China, the recipient country (Egypt) had effectively 'adopted' them, making them actionable under WTO rules. This approach targeted both direct Egyptian subsidies and indirect Chinese subsidies to Chinese enterprises in Egypt. The EC applied the same logic to *filament glass fibers from Egypt* (Commission Implementing Regulation (EU) 2020/870 of 24 June 2020), imposing CVD due to the presence of Chinese subsidies.

United States of America

The EU's use of CVD measures on transnational subsidies seems to have influenced the US to consider similar actions.

Till 24 April 2024, Federal Regulation 19 § 351.527 restricted the United States Department of Commerce ('USDOC') from investigating transnational subsidies. However, on 24 April 2024, the USDOC removed this regulation. Given that the US is one of the biggest users of trade remedial measures, it remains

to be seen the extent to which the new regulations will be used by the US for investigating transnational subsidies and the WTO challenges which may come in view of the new regulations.

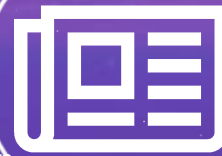
Conclusion

With the US and the EU taking steps to address transnational subsidies, it remains to be seen if the other countries will follow suit. The current text of the WTO's SCM Agreement offers certain challenges in investigating transnational subsidies and their countervailability. The limitations within the SCM regarding jurisdiction and territoriality are certain real challenges which face the countries targeting transnational subsidies under the SCM Agreement framework.

However, with no appointment of members to the WTO Appellate Body, particularly by the US, other countries may be enticed to follow suit in countering the transnational subsidies notwithstanding the legal challenges which may come up in justifying such measures under the present SCM Agreement framework.

[The author is an Associate in WTO and International Trade Division in Lakshmikumaran & Sridharan Attorneys, New Delhi]

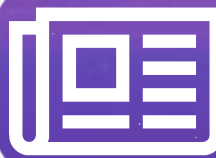
Trade Remedy News.



- Alloy steel chisel/ tool and hydraulic rock breaker in fully assembled condition from China PR and Korea RP – India's DGTR recommends imposition of anti-dumping duty
- Aluminium foil below 80 microns from Thailand – India initiates mid-term review of anti-dumping duty
- Azo pigment from China PR – India initiates anti-dumping investigation
- Boltless steel shelving units prepackaged for sale, from India – USA issues negative determination of sales at less than fair value between 1 April 2022 and 31 March 2023
- Brass rod from India – USA final affirmative determination in less-than-fair-value investigation. POI was from 1 April 2022 till 31 March 2023
- Ceramic tile from India – USA initiates anti-dumping and countervailing duty investigations
- Decor paper from China PR – India initiates mid-term review of anti-dumping duty
- Easy open ends of tin plate, including electrolytic tin plate (ETP), measuring 401 Diameter (99MM) and 300 Diameter (73MM) in dimension from China PR – India's DGTR recommends imposition of anti-dumping duty
- Effect pearlescent pigments or mica pearlescent pigments, excluding effect pigments for automotive applications from China PR – India initiates countervailing duty investigation
- Epoxy resins from India – USA initiates anti-dumping and countervailing duty investigations
- Fine denier polyester staple fiber from India – USA continues anti-dumping and countervailing duty order after sunset review
- Flexible Slabstock Polyol from China PR and Thailand – India's DGTR recommends imposition of anti-dumping duty
- Frozen warmwater shrimp from India – USA issues preliminary affirmative countervailing duty determination
- Granular Polytetrafluoroethylene Resin from India – USA issues preliminary determination of sale at less than normal value from 2 September 2021 till 28 February 2023 and preliminary determination that countervailing subsidies were provided between 6 July 2021 and 31 December 2022 to an entity
- Insoluble Sulphur from China PR and Japan – India initiates anti-dumping duty investigation



Trade Remedy News



- Isobutylene-Isoprene Rubber (IIR) from China PR, Russia, Saudi Arabia, Singapore and USA – India's DGTR recommends imposition of provisional anti-dumping duty
- Linear Alkyl Benzene (LAB) from Iran and Qatar – India initiates anti-dumping investigation
- Lined paper products from India – USA issues determination that ITC Ltd. made sales at below normal value while Navneet Education did not
- Mattresses from India – USA amends preliminary affirmative determination in the less-than-fair-value investigation
- Melamine from India – USA issues determination of material injury by sale at less than fair value and by subsidization
- New Pneumatic Off-The-Road Tires from India – USA issues preliminary determination that countervailing subsidies were provided between 1 January 2022 and 31 December 2022 and preliminary determination of sale at less than normal value provided between 1 March 2022 and 28 February 2023
- New pneumatic radial tyres for buses and lorries from China PR – India's DGTR recommends continuation of countervailing duty after sunset review
- Non-refillable steel cylinders from India – USA issues final affirmative countervailing duty determination and final affirmative determination in less-than-fair-value investigation. POI was from 1 April 2022 till 31 March 2023.
- Pipe fittings from India – Türkiye continues anti-dumping duty after sunset review
- Plastic Processing Machines from China PR and Taiwan – India initiates anti-dumping investigation
- Polyester Textured Yarn from India – USA issues negative determination of sale at less than normal value between 1 January 2022 and 31 December 2022
- Potassium Tertiary Butoxide (KTB) from China PR and USA – India initiates anti-dumping investigation
- Pretilachlor and its intermediate PEDDA from China PR – India initiates anti-dumping investigation
- Sodium Cyanide (NaCN) from China PR, EU, Japan and Korea RP – India's DGTR recommends imposition of anti-dumping duty
- Sodium Tertiary Butoxide (STB) from China PR – India initiates anti-dumping investigation
- Telescopic Channel Drawer Slider from China PR – India's DGTR recommends imposition of provisional anti-dumping duty
- Titanium Dioxide from China PR – India initiates anti-dumping investigation
- Vitamin-A Palmitate from China PR, EU and Switzerland – India initiates anti-dumping investigation



Trade Remedy actions by India

Product	Country	Notification No.	Date of notification	Remarks
Alloy steel chisel/ tool and hydraulic rock breaker in fully assembled condition	China PR and Korea RP	F. No. 6/8/2022-DGTR	28 March 2024	Anti-dumping duty recommended
Aluminium foil below 80 microns	Thailand	F. No. 7/3/2024-DGTR	29 March 2024	Mid-term review of anti-dumping duty initiated
Azo pigment	China PR	F. No. 6/06/2024-DGTR	29 March 2024	Anti-dumping investigation initiated
Decor paper	China PR	F. No. 07/15/2023-DGTR	28 March 2024	Mid-term review of anti-dumping duty initiated
Easy open ends of tin plate, including electrolytic tin plate (ETP), measuring 401 Diameter (99MM) and 300 Diameter (73MM) in dimension	China PR	F. No. 6/1/2023-DGTR	28 March 2024	Anti-dumping duty recommended
Effect pearlescent pigments or mica pearlescent pigments, excluding effect pigments for automotive applications	China PR	F. No. 6/08/2024-DGTR	29 March 2024	Countervailing duty investigation initiated

Product	Country	Notification No.	Date of notification	Remarks
Flexible Slabstock Polyol	China PR and Thailand	F. No. 6/17/2022-DGTR	28 March 2024	Anti-dumping duty recommended
Insoluble Sulphur	China PR and Japan	F. No. 6/01/2024-DGTR	27 March 2024	Anti-dumping investigation initiated
Isobutylene-Isoprene Rubber (IIR)	China PR, Russia, Saudi Arabia, Singapore and USA	F. No. 6/05/2023-DGTR	16 April 2024	Provisional anti-dumping duty recommended
Linear Alkyl Benzene (LAB)	Iran and Qatar	F. No. 6/05/2024-DGTR	29 March 2024	Anti-dumping investigation initiated
New pneumatic radial tyres for buses and lorries	China PR	F. No. 7/30/2023-DGTR	22 April 2024	Sunset review of Countervailing duty recommends continuation of duty
Plastic Processing Machines	China PR and Taiwan	F. No. 6/09/2024-DGTR	29 March 2024	Anti-dumping investigation initiated
Potassium Tertiary Butoxide (KTB)	China PR and USA	F. No. 6/11/2024-DGTR	28 March 2024	Anti-dumping investigation initiated
Pretilachlor and its intermediate PEDDA	China PR	F. No. 6/31/2024-DGTR	29 March 2024	Anti-dumping investigation initiated
Sodium Cyanide (NaCN)	China PR, EU, Japan and Korea RP	F. No. 6/03/2023-DGTR	28 March 2024	Anti-dumping duty recommended
Sodium Tertiary Butoxide (STB)	China PR	F. No. 6/11/2024-DGTR	28 March 2024	Anti-dumping investigation initiated

Product	Country	Notification No.	Date of notification	Remarks
Telescopic Channel Drawer Slider	China PR	F. No. 6/13/2023- DGTR	19 April 2024	Provisional anti-dumping duty recommended
Titanium Dioxide	China PR	F. No. 6/03/2024- DGTR	28 March 2024	Anti-dumping investigation initiated
Vitamin-A Palmitate	China PR, EU and Switzerland	F. No. 06/07/2024- DGTR	28 March 2024	Anti-dumping investigation initiated

Trade remedy measures against India

Product	Investigating Country	Document No.	Date of Document	Remarks
Boltless Steel Shelving Units Prepackaged for Sale	USA	FR Doc No: 2024- 08371	19 April 2024	Negative determination of sales at less than fair value between 1 April 2022 and 31 March 2023
Brass Rod	USA	FR Doc No: 2024- 08455	22 April 2024	Final affirmative determination in less-than-fair-value investigation. POI was from 1 April 2022 till 31 March 2023
Ceramic Tile	USA	FR Doc No: 2024- 08882	25 April 2024	Anti-dumping and countervailing duty investigations initiated

Product	Investigating Country	Document No.	Date of Document	Remarks
Epoxy Resins	USA	FR Doc No: 2024-07458	9 April 2024	Anti-dumping and countervailing duty investigations initiated
Fine Denier Polyester Staple Fiber	USA	FR Doc No: 2024-07692	11 April 2024	Anti-dumping and countervailing duty order continued after sunset review
Frozen Warmwater Shrimp	USA	FR Doc No: 2024-06843	1 April 2024	Preliminary affirmative countervailing duty determination issued
Granular Polytetrafluoroethylene Resin	USA	FR Doc No: 2024-07073	3 April 2024	Preliminary determination of sale at less than normal value from 2 September 2021 till 28 February 2023
Granular Polytetrafluoroethylene Resin	USA	FR Doc No: 2024-07348	8 April 2024	Preliminary determination that countervailing subsidies were provided between 6 July 2021 and 31 December 2022 to an entity
Lined Paper Products	USA	FR Doc No: 2024-07904	15 April 2024	Determination that ITC Ltd. made sales at below normal value while Navneet Education did not
Mattresses	USA	FR Doc No: 2024-06794	1 April 2024	Preliminary affirmative determination in the less-than-fair-value investigation amended
Melamine	USA	FR Doc No: 2024-07181	4 April 2024	Determination of material injury by sale at less than fair value and by subsidization

Product	Investigating Country	Document No.	Date of Document	Remarks
New Pneumatic Off-The-Road Tires	USA	FR Doc No: 2024-07281	5 April 2024	Preliminary determination that countervailing subsidies provided between 1 January 2022 and 31 December 2022
New Pneumatic Off-the-Road Tires	USA	FR Doc No: 2024-07282	5 April 2024	Preliminary determination of sale at less than normal value provided between 1 March 2022 and 28 February 2023
Non-Refillable Steel Cylinders	USA	FR Doc No: 2024-08451	22 April 2024	Final affirmative countervailing duty determination. POI was from 1 April 2022 till 31 March 2023
Non-Refillable Steel Cylinders	USA	FR Doc No: 2024-08450	22 April 2024	Final affirmative determination in less-than-fair-value investigation. POI was from 1 April 2022 till 31 March 2023
Pipe fittings	Türkiye	Communiqué No: 2024/11	5 April 2024	Anti-dumping continued after sunset review
Polyester Textured Yarn	USA	FR Doc No: 2024-08315	18 April 2024	Negative determination of sale at less than normal value between 1 January 2022 and 31 December 2022

WTO News



- EU's import prohibitions on citrus fruits from South Africa challenged
- USA's Tax Credits under the Inflation Reduction Act challenged by China
- Türkiye launches safeguard investigation on ethyl acetate

EU's import prohibitions on citrus fruits from South Africa challenged

South Africa has requested consultation with the European Union concerning certain aspects of the European Union's regime on importation of citrus fruit from South Africa. As per document circulated in the WTO on 24 April 2024, South Africa claims that the EU measure prohibiting importation of South African citrus fruit affected by the fungus 'citrus black spot' (*Phyllosticta citricarpa*) is inconsistent with various provisions of the WTO's Agreement on Sanitary and Phytosanitary Measures and the GATT 1994.

It may be noted that this is the second dispute by South Africa against the EU's measures relating to import of citrus fruits. The earlier dispute (DS613) was related to EU's application of certain phytosanitary measures relating to *Thaumatotibia leucotreta* ('false codling moth').

USA's Tax Credits under the Inflation Reduction Act challenged by China

China has sought consultations with the USA over latter's Inflation Reduction Act which according to China provides massive subsidies that are contingent, in one way or another,

upon the use of domestic over imported goods or otherwise discriminate against goods of Chinese origin. As per document circulated in the WTO on 28 March 2024, the request for consultations concerns Clean Vehicle Credit, Investment Tax Credit for Energy Property, Clean Electricity Investment Tax Credit, Production Tax Credit for Electricity from Renewables, and Clean Electricity Production Tax Credit. China alleges violation of various provisions of the GATT 1994, the Trade-Related Investment Measures (TRIMs) Agreement and the Subsidies and Countervailing Measures (SCM) Agreement.

Türkiye launches safeguard investigation on ethyl acetate

Türkiye has notified the WTO's Committee on Safeguards that it has initiated a safeguard investigation on ethyl acetate on 6 April 2024. Ethyl acetate is currently classifiable in the Turkish Customs Tariff Schedule under the customs tariff code of 2915.31.00.00.00. As per document circulated in the WTO on 8 April, there is an absolute and relative increase in imports of ethyl acetate and the economic indicators of the Türkiye companies such as production, domestic sales, capacity utilization rates and profitability have significantly deteriorated.

India Customs & Trade Policy Update



- Melon seeds – Imports 'Free' from 1 May 2024
- Rice – Export of 1000 MT of Kala Namak rice allowed – Export duty also exempted
- Onions – Export of 2000 MT of white onions allowed
- Onions – Export of specified quantity to Sri Lanka and UAE allowed
- Yellow peas – Exemption from BCD and AIDC and relaxation in import policy extended
- Isopropyl alcohol – Country-wise Quantitative Restrictions discontinued from 1 April 2024

Melon seeds – Imports ‘Free’ from 1 May 2024

Import of melon seeds is ‘free’, i.e., the import of said product is no more restricted from 1 May 2024 till 30 June 2024. As per Notification No. 5/2024, dated 5 April 2024 issued for this purpose, consignments with ‘shipped on board’ Bill of Lading issued till 30 June 2024 shall be treated as ‘free’ to import. It may however be noted that import is permissible on actual user basis to processors of melon seeds having a valid FSSAI manufacturing licence. Further, all imports are to be subject to compulsory registration under Melon Seeds Import Monitoring System. The notification also states that goods imported/shipped/ arrived but not cleared from Customs prior to 1 May can also be cleared from 1 May till 30 June 2024. Procedure for registration of import consignments under Melon Seeds Import Monitoring System has been also notified by DGFT Public Notice No. 2/2024-25, dated 9 April 2024.

Rice – Export of 1000 MT of Kala Namak rice allowed – Export duty also exempted

The Ministry of Commerce and Industry has allowed export of 1000 MT of Kala Namak rice falling under ITC(HS) Code 1006 30 90 through specified customs ports - Varanasi Air Cargo, JNCH Maharashtra, CH Kandla Gujarat, LCS Nepalgunj Road, LCS

Sonauli, and LCS Barhni. As per Notification No. 1/2024, dated 2 April 2024, the authorized signatory for certification of the Kala Namak rice and its quantity will be Director, Agriculture Marketing & Foreign Trade, Lucknow. Further, the Ministry of Finance has also issued Notification No. 22/2024-Cus., dated 2 April 2024 (effective from 3 April 2024) allowing exemption from customs export duty on said product and quantity.

Onions – Export of 2000 MT of white onions allowed

The Ministry of Commerce and Industry has allowed export of 2000 MT of white onions (ITC(HS) Code 0703 10 19) collectively from Mundra port, Pipavav port and from Nhava Sheva/JNPT port. A certificate in this regard would however be required from the Horticulture Commissioner, Government of Gujarat, certifying the item and quantity of white onion to be exported. Notification No. 9/2024-25, dated 25 April 2024 has been issued for this purpose.

Onions – Export of specified quantity to Sri Lanka and UAE allowed

The Ministry of Commerce and Industry has allowed export of onions (ITC(HS) Code 0703 10 19) to Sri Lanka and UAE. As per

Notification No. 7/2024, dated 15 April 2024, 10,000 MT of onions can be exported to Sri Lanka while an additional quantity of 10,000 MT can be exported to UAE. It may be noted that in respect of UAE, this quantity is over and above the quantity of 24,400 MT allowed on 1 March and 3 April 2024. Exports are to be made through National Cooperative Exports Ltd.

Yellow peas – Exemption from BCD and AIDC and relaxation in import policy extended

The import of yellow peas falling under Tariff Item 0713 10 10 of the Customs Tariff Act, 1975 was exempted from payment of customs duty leviable under the First Schedule to the Customs Tariff Act, 1975 and Agriculture Infrastructure and Development Cess leviable under Finance Act, 2021 *vide* Notification No. 64/2023-Cus., till 31 March 2024. The said exemption has been extended to allow duty free imports of yellow peas with bill of lading issued on or before 30 June 2024. Notification No. 23/2024-Cus., dated 5 April 2024 has been

issued for this purpose. Further, the earlier relaxed import policy condition of said product has also been extended. As per Ministry of Commerce and Industry Notification No. 04/2023, dated 5 April 2024, import of yellow peas is free without the Minimum Import Price condition and without Port registration, where Bill of Lading has been issued on or before 30 June 2024, subject to registration under online Import Monitoring System. The last date for Bill of Lading was 31 March 2024 earlier.

Isopropyl alcohol – Country-wise Quantitative Restrictions discontinued from 1 April 2024

Country-wise quantitative restrictions (QR) imposed on import of Isopropyl Alcohol under TI 2905 12 20 of the Customs Tariff Act, 1975 *vide* DGFT Notification No. 64/2015-20, dated 31 March 2023 for a period of one year, i.e., 2023-24, have been discontinued with effect from 1 April 2024. As per Trade Notice No. 02/2024-25, dated 18 April 2024, import of Isopropyl Alcohol is now 'Free' without any policy condition.



Ratio Decidendi

- Electronic Control Unit, a printed circuit board, used for manufacture of Electronic Stability Control System for use in Anti-Lock Braking Systems is classifiable as part of automobile – CESTAT New Delhi
- Menthol scented supari is classifiable under Chapter 21 and not under Chapter 08 – Madras High Court
- Agriculture reaper is classifiable under Heading 8467 – CESTAT Chennai
- Disodium Ribonucleotide is classifiable as food flavoring material under Tariff Item 2106 90 60 – CESTAT Chennai
- Ground glass for manufacture of toothpaste is classifiable under Customs TI 3207 40 00 – CESTAT Mumbai

Electronic Control Unit, a printed circuit board, used for manufacture of Electronic Stability Control System for use in Anti-Lock Braking Systems is classifiable as part of automobile

The CESTAT New Delhi has held that Electronic Control Unit (ECU) which is a printed circuit board imported and used for manufacture of Electronic Stability Control Systems (ESCS), which it sold to automobile manufacturers for use in Anti-Lock Braking Systems [ABS] or Electronic Braking Systems [EBS] is classifiable as part of automobile under Tariff Item 8708 89 10 of the Customs Tariff Act, 1975. Assessee's contention that although imported product was an automotive part, but since ECU is purely an electronic printed circuit board, it should be classified under TI 9032 89 10, was thus rejected. Rejecting the appeal, the Tribunal noted that ECU does not and cannot either measure or regulate anything and that it only analyses the data provided to it by other parts of the ABS (sensors) and compares it with standards and issues instructions. [*Continental Automotive Brake Systems India Private Limited v. Commissioner* – 2024 VIL 325 CESTAT DEL CU]

Menthol scented supari is classifiable under Chapter 21 and not under Chapter 08

The Madras High Court has held that Menthol scented supari is classifiable under Chapter 21 of the Customs Tariff Act, 1975 and not under Chapter 08 *ibid*. Relying upon Supplementary Note 2 to Chapter 21, the Court observed that the Legislature has specifically carved out an entry for the product which contains betel nut pieces, menthol added to it, and does not include any of the 3 items viz., lime, katha (catechu) or tobacco. The Court also noted that the specific entry under Chapter 21 which would prevail over general description of the nut under Chapter 08. The specific inclusion of supari in the Supplementary Note 2 to Chapter 21 and fundamental distinction in the object and purport of both the chapters, was also noted by the Court when it rejected the Department's petition. The Department's argument that to qualify under Chapter 21 the product should have undergone a process by which it lost its original character of a betel nut, was also rejected. Supreme Court's decision in the case of *Crane Betel Nut Powder Works* was distinguished. [*Commissioner v. AK Impex* – 2024 VIL 328 MAD CU]

Agriculture reaper is classifiable under Heading 8467

The CESTAT Chennai has held that Agriculture Reaper which are handheld machines, popularly known as Brush Cutters, is classifiable under Heading 8467 of the Customs Tariff Act, 1975 and not under Heading 8433 *ibid*. The Tribunal in this regard observed that the goods were machines for working in hand which are specifically dealt in Heading 8467. The argument that the goods cannot be used 'in' hand in the sense of 'in the palm of the hand', was also rejected by the Tribunal while it held that the phrase 'in hand' has to be understood very broadly. It observed that the goods from their description, weight, common use understanding, pictures, were tools for working in hand. [Kisankraft Machine Tools Pvt. Ltd. v. Commissioner – 2024 (3) TMI 1188-CESTAT Chennai]

Disodium Ribonucleotide is classifiable as food flavoring material under Tariff Item 2106 90 60

The CESTAT Chennai has held that Disodium Ribonucleotide classifiable as food flavoring material under Tariff Item 2106 90 60 of the Customs Tariff Act, 1975 and not under Chapter 38 as miscellaneous chemical product. Elaborately discussing the distinction between 'flavour enhancers' and 'flavouring

materials', the Tribunal observed that the product concerned had both characteristics – it possesses a flavour of its own and it also enhances taste. It noted that the product is also known in the trade and among people who use it as food flavouring material. [Ajinomoto India Pvt. Ltd. v. Commissioner – 2024 (4) TMI 46-CESTAT Chennai]

Ground glass for manufacture of toothpaste is classifiable under Customs TI 3207 40 00

The CESTAT Mumbai has held that 'BIOMIN F-Ground Glass (Fluoro Calcium Phospho-Silicate)' and 'BIOMIN C-Glass (Chloro Calcium Phospho-Silicate)' are appropriately classifiable under Tariff Item 3207 40 00 of the Customs Tariff Act, 1975 and not under TI 3824 99 90 *ibid*. The Tribunal noted that said product was covered more specifically by the description of CTI 3207 40 00 as 'glass frit' and 'glass in the form such as powder, granules or flakes', and not as 'other' under the residual entry of 'other chemical products and preparations of the chemical or allied industries' under Chapter 38. The fact that the impugned goods were being used in the manufacture of toothpaste was also considered by the Tribunal. Lastly, the Tribunal also rejected the contention of the Department that GIR 4 should be used to classify the goods under TI 3824 99 90 as the description of the goods under this heading is most akin. It was

held that the Interpretative Rules should be followed sequentially and that GIR 1 was applicable here. Further, according to the Tribunal, use in ceramic, enamelling or glass industry is not material for classification under TI 3207 40 00.

CBIC Circular No. 03/2012-Cus., relating to classification of fused silica, was also relied upon. [*Group Pharmaceuticals Ltd. v. Commissioner* – (2024) 16 Centax 477 (Tri.-Bom)]

<p>NEW DELHI 7th Floor, Tower E, World Trade Centre, Nauroji Nagar, Delhi – 110029 Phone : +91-11-41299800, +91-11-46063300 ----- 5 Link Road, Jangpura Extension, Opp. Jangpura Metro Station, New Delhi 110014 Phone : +91-11-4129 9811 ----- B-6/10, Safdarjung Enclave New Delhi -110 029 Phone : +91-11-4129 9900 E-mail : Lsdel@lakshmisri.com , lprdel@lakshmisri.com</p>	<p>MUMBAI 2nd floor, B&C Wing, Cnergy IT Park, Appa Saheb Marathe Marg, (Near Century Bazar)Prabhadevi, Mumbai - 400025 Phone : +91-22-24392500 E-mail : lsbom@lakshmisri.com</p>
<p>CHENNAI 2, Wallace Garden, 2nd Street, Chennai - 600 006 Phone : +91-44-2833 4700 E-mail : lsmds@lakshmisri.com</p>	<p>BENGALURU 4th floor, World Trade Center, Brigade Gateway Campus, 26/1, Dr. Rajkumar Road, Malleswaram West, Bangalore-560 055. Phone : +91-80-49331800 Fax:+91-80-49331899 E-mail : lsblr@lakshmisri.com</p>
<p>HYDERABAD 'Hastigiri', 5-9-163, Chapel Road, Opp. Methodist Church, Nampally, Hyderabad - 500 001 Phone : +91-40-2323 4924 E-mail : lshyd@lakshmisri.com</p>	<p>AHMEDABAD B-334, SAKAR-VII, Nehru Bridge Corner, Ashram Road, Ahmedabad - 380 009 Phone : +91-79-4001 4500 E-mail : lsahd@lakshmisri.com</p>
<p>PUNE 607-609, Nucleus, 1 Church Road, Camp, Pune-411 001. Phone : +91-20-6680 1900 E-mail : ls pune@lakshmisri.com</p>	<p>KOLKATA 6A, Middleton Street, Chhabildas Towers, 7th Floor, Kolkata – 700 071 Phone : +91 (33) 4005 5570 E-mail : lskolkata@lakshmisri.com</p>
<p>CHANDIGARH 1st Floor, SCO No. 59, Sector 26, Chandigarh -160026 Phone : +91-172-4921700 E-mail : lschd@lakshmisri.com</p>	<p>GURUGRAM OS2 & OS3, 5th floor, Corporate Office Tower, Ambience Island, Sector 25-A, Gurugram-122001 phone: +91-0124 - 477 1300 Email: lsgurgaon@lakshmisri.com</p>
<p>PRAYAGRAJ (ALLAHABAD) 3/1A/3, (opposite Auto Sales), Colvin Road, (Lohia Marg), Allahabad -211001 (U.P.) Phone : +91-532-2421037, 2420359 E-mail : lsallahabad@lakshmisri.com</p>	<p>KOCHI First floor, PDR Bhavan, Palliyil Lane, Foreshore Road, Ernakulam Kochi-682016 Phone : +91-484 4869018; 4867852 E-mail : lskochi@laskhmisri.com</p>
<p>JAIPUR 2nd Floor (Front side), Unique Destination, Tonk Road, Near Laxmi Mandir Cinema Crossing, Jaipur - 302 015 Phone : +91-141-456 1200 E-mail : lsjaipur@lakshmisri.com</p>	<p>NAGPUR First Floor, HRM Design Space, 90-A, Next to Ram Mandir, Ramnagar, Nagpur - 440033 Phone: +91-712-2959038/2959048 E-mail : lsnagpur@lakshmisri.com</p>

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